



STATE OF DELAWARE

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January 24, 201

**STAFF MEMORANDUM**

TO: The Chairman and Members of the Commission

FROM: Toni Loper, Public Utility Analyst II 

SUBJECT: IN THE MATTER OF THE APPLICATION OF CENTURYLINK, INC., WILDCAT MERGER SUB 1 LLC, WWG MERGER SUB LLC, WILDCAT HOLD CO LLC, AND LEVEL 3 COMMUNICATIONS, INC. FOR APPROVALS UNDER THE PROVISION OF 26 DEL. C. § 215 (FILED JANUARY 17, 2017) PSC DOCKET NO. 17-0035

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**Application:**

On January 17, 2017, pursuant to 26 Del. C. § 215, CenturyLink, Inc. ("CenturyLink"), on behalf of its Delaware operating subsidiary CenturyLink Communications, LLC ("CLC"), and Level 3 communications, Inc. ("Level 3"), on behalf of its Delaware operating subsidiaries Level 3 Communications, LLC, Broadwing Communications, LLC, Global Crossing Telecommunications, Inc., TelCove Operations, LLC, Level 3 Telecom Data Services, LLC (f/k/a TW Telecom Data Services LLC) and WiTel Communications, LLC (collectively "Level 3 OpCos") filed an application (the "Applications") with the Delaware Public Service Commission ("Commission" or "PSC") seeking authorization to complete transactions (the "Transactions") whereby CenturyLink will acquire indirect control of Level 3 OpCos. In addition, the Applicants request the authority for CenturyLink to enter into certain financing arrangements related to the transaction (the "Financing Arrangements").

**Applicants:**

**Level 3**

Level 3 is a publicly traded Delaware corporation headquartered in Broomfield, Colorado. Through its operating subsidiaries, Level 3 OpCos, Level 3 offers a wide range of telecommunications services over its broadband fiber-optic network in North America, South America, Europe, and Asia.<sup>1</sup>

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<sup>1</sup>The following is a list of Level 3 OpCos subsidiaries authorized in Delaware and the Docket No., Order No. and date each companies' authority was granted; Level 3 Communications, LLC, Docket No. 98-114 (December 1, 1998), Broadwing Communications, LLC, Docket Nos. 03-114 and 04-314, Order Nos. 6174 and 6545, Global Crossing Telecommunications, Docket No. 95-194, Order No. 4102 (December 19, 1995), TelCove Operations, LLC, Docket No. 00-403, Order No. 5586 (November 21, 2000), Level 3 Telecom Data Services, LLC, Docket No. 14-117, Order No. 8591 (August 5, 2014) and WiTel Communications, LLC Docket No. 99-25, Order No. 5037, (March 9, 1999).

### Level 3 OpCos

Level 3 OpCos are wholly-owned subsidiaries of Level 3. The Level 3 OpCos are authorized to provide intrastate competitive long distance, local exchange telecommunications, facilities-based common carrier and resold telecommunications services in Delaware.

### CenturyLink

CenturyLink is a global communications, hosting, cloud, and IT services company which provided broadband, voice, video, data and managed services in the United States. Through its Delaware authorized subsidiary, CLC, CenturyLink is authorized to provide facilities-based and non-facilities based, interexchange and competitive local exchange services granted in PSC Docket No. 99-198, Order No. 5273 (November 16, 1999).

### Transaction:

#### Transfer of Control

On October 31, 2016, CenturyLink entered into an Agreement and Plan of Merger (“Merger Agreement”) with Level 3, Wildcat Merger Sub 1 LLC (“Merger Sub 1”)<sup>2</sup>, and WWG Merger Sub LLC (“Merger Sub 2”)<sup>3</sup>. In connection with the Merger Agreement, CenturyLink created a direct Subsidiary, Wildcat Holdco LLC, which in turn created two direct subsidiaries of its own, Merger Sub 1 and Merger Sub 2.

The Merger Agreement details the conditions whereby Merger Sub 1 will merge with and into Level 3 (the “Initial Merger”), with Level 3 surviving as an indirect wholly-owned subsidiary of CenturyLink, and immediately following the Initial Merger Level 3 will be merged with and into Merger Sub 2 (the “Subsequent Merger” and, together with the Initial Merger, the “Combination”), with Merger Sub 2 continuing as the surviving the Subsequent Merger as an indirect wholly-owned subsidiary of CenturyLink. As a part of the Transaction, Level 3 common stock (the “Level 3 Common Stock”) will be converted into the right to receive \$26.50<sup>4</sup> and 1.4286 shares of CenturyLink common stock (the “CenturyLink Common Stock”).

#### Financing Arrangements

The aggregate value of the above mentioned exchange of Level 3 Common Stock is \$24.5 billion.<sup>5</sup> Century Link expects to incur \$8.225 billion in debt and enter into a new \$2.0 billion revolving credit facility (together the “Acquisition Debt”) in connection with the Transaction, CenturyLink expects to use approximately \$1.150 billion of the Acquisition Debt proceeds to refinance certain existing debt of CenturyLink and Level 3. Additionally, CenturyLink expects to incur incremental debt of \$7.075 billion in connection with the transaction, they will apply this amount, together with cash on hand of CenturyLink and Level 3, to finance the cash portion of the Transaction consideration and related fees and expenses as described in the Application. The Combination, as asserted in the Application, is subject to (i) the approval and adoption of the Merger Agreement by the stockholders of Level 3, and (ii) the

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<sup>2</sup> Wildcat Merger Sub 1 LLC is an indirect, wholly owned subsidiary of CenturyLink.

<sup>3</sup> WWG Merger Sub LLC is an indirect, wholly-owned subsidiary of CenturyLink.

<sup>4</sup> Cash without interest.

<sup>5</sup> The cash portion of this transaction is approximately \$9.5 billion.

approval of the shareholders of CenturyLink of the issuance of the CenturyLink Common Stock in the Initial Merger, as well as other customary closing conditions, including federal approval and Commission approval.

**Financial, Legal and Technical Qualifications:**

CenturyLink has the requisite financial, technical, legal, and managerial qualifications to acquire Level 3. CenturyLink has extensive experience as a global communications, hosting, cloud, and IT services company. The Applicants supplied a professional resume for officers responsible for Delaware operations in support of these requirements.

**Public Interest:**

The Applicants assert that the public interest will be served. The transactions will enable the combined company to become a more viable, better-resources competitor in the highly competitive Delaware market. By combining resources the companies will be able to offer a broad range of services, provide economies of scale which will improve the combined enterprise's economic position, and which allows the Applicants to access debt at more favorable terms and conditions. The Applicants assert that these transactions will yield both financial and operational benefits that will benefit Delaware customers, and will not result in a change in day-to-day operations. Furthermore, the transaction is expected to be transparent to customers, and is not expected to affect current operations of the Applicants, nor adversely affect competition for telecommunications service in Delaware. In addition, the Applicants have shown that the transactions are for proper purpose, and are seeking the approvals of the regulatory authorities which are necessary for the transactions to demonstrate that they are in accordance with the law.

**Staff Recommendation:**

Applications seeking transfer of control by large multi-state resellers of competitive intrastate telecommunications services technically come under the provisions of 26 *Del. C.* §215 because the companies are deemed to be public utilities. The Applicants have represented that the proposed transactions are in accordance with law, for a proper purpose, and consistent with the public interest. The Commission has previously allowed such applications to become effective by statutory approval without Commission action. The result seems appropriate under the circumstances. Staff, therefore, recommends that the Commission not act on this application. Under 26 *Del. C.* §215(a)(1) and (a)(3), the effect will be that the application is deemed to be approved by the Commission. Staff will also acquire verification from the Applicant that the proposed transactions and financing arrangements have been completed.